

UTEX Communications Corp. d/b/a Feature Group IP
W. Scott McCollough, Vice President - General Counsel
1250 South Capital of Texas Highway, Building 2, Suite 235
Austin, Texas 78746

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FGD Non Recurring Installation Charge	
Per Channel or Trunk	\$473.00
Carrier Identification Code Establish, Add or Change	
Per End Office	\$31.24
Per Tandem	\$31.24

Carrier Identification Code Parameter (CIP)	
Rate Per Call	\$0.000100

6.9.5 Local Switching and Network Rate Elements

Local Switching	
Per Access Minute	\$0.002654

<u>Information Surcharge</u>	
Per 100 Access Minute:	\$0.000000

6.9.6 Signaling Translation Service Rate Elements

6.9.6(A) Non Recurring:	
Per LATA in which traffic exchange occurs:	\$10,000

6.9.6(B) Recurring:	
Per session:	\$0.05

6.9.7 Reserved for Future Use

6.9.8 Chargeable Optional Features

<u>Rate Element</u>	<u>Rate Per Minute</u>
800 Data Base Query	\$0.002531
POTS Translation	\$0.000000
Call Handling and Destination	\$0.000271
Signaling Transfer Point Access	ICB
Network Blocking Charge (Per Blocked Call)	
FGD only	\$0.0155

6.9.9 Presubscription

<u>Authorized PIC Change</u>	
Nonrecurring Charge Per Telephone Exchange	
Service Voice Equivalent Line or Trunk	\$5.00

Unauthorized PIC Change

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Nonrecurring Charge Per Telephone Exchange	
Service Line or Trunk	\$35.65
Residential Customers (POTS and ISDN BRI)	
Monthly Recurring Charge	
Primary Line	\$5.21
Non-Primary Line	\$5.21
Business Customers	
Monthly Recurring Charge	
Single Line	\$5.21
2 - 5 Lines	\$5.21
6 Lines and Over	5:1 ratio will be applied
Centrex-Like Lines	
Monthly Recurring Charge Per Line	\$5.21
PRI-ISDN Lines	
Monthly Recurring Charge Per Trunk	\$21.55
6.9.10 Reserved for Future Use	
6.9.11 <u>Optional Media and Programming</u>	
Magnetic Tape Charge	
Per Magnetic Tape	\$91.44
Optional Format Programming Charge	
Per Each ½ Hour or Fraction	\$37.20

SECTION 7 – IGI-POP Service

7.1 Service Description, Rates and Restrictions

7.1.1 GENERAL

The FeatureGroup IP services in this IGI-POP Tariff are voluntary and offered pursuant to FeatureGroup IP's Interconnection rights under the Federal Telecommunications Act of 1996 to interconnect its network(s) with other carriers, including Local Exchange Carriers, for the mutual exchange of traffic. This IGI-POP tariff does not change existing agreements interconnection or traffic exchange agreements that are reached under § 251(b) or (c) or § 252 of the Communications Act. Feature Group IP will not charge a usage sensitive rate for any traffic, which is considered "non-toll" under the definition of this Tariff.

FeatureGroup IP has an existing Interconnection Agreement with SBC-Texas, which has a negotiated provision which clearly states that no compensation is due as between SBC and FeatureGroup IP for all traffic to or from the Internet, including VoIP applications. For each LATA where FeatureGroup IP (Which does business in Texas as UTEX Communications

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Corp.) passes IGI-POP traffic with SBC in Texas, UTEX Communications Corp will treat such traffic as having no compensation due as between UTEX and SBC.

Also consistent with the FCC's Regulatory Light Touch policy on Voice Over Internet Protocol, Feature Group IP will offer to all other LECs and CMRS carriers with which it exchanges traffic a "No Compensation Due" arrangement for the mutual exchange of traffic to and from new technology providers.

7.1.2 Restrictions and Options

7.1.2(A) Current Restrictions:

Consistent with the FCC's Light Regulatory Touch policy, the only current restriction is that in order to be eligible for this service from Feature Group IP, Customer must affirmatively represent that it is an Enhanced Service Provider and entitled to the ESP Exemption and will use IGI-POP service only for applications or services that qualify for the ESP Exemption. Legacy Carriers may not subscribe to the service.

7.1.2(A).1 NXX Codes

Feature Group IP shall be code owner for all NPA-NXXs which are part of this service. The IGI-POP Customer must identify any directory numbers that it desires to retain for use with IGI-POP and wishes Feature Group IP to port on Customer's behalf. If no such directory numbers are reported, or if additional numbers are desired, then the Customer will be assigned one or more directory numbers from Feature Group IP's inventory. The Customer shall indicate the local calling area or rate center for which it wishes to have numbering resources supplied. Customers may also choose to subscribe to Company's IGI-POP "500" service.

7.1.2(A).2 Call Directionality

IGI-POP service offers providers of Internet Protocol (IP) enabled voice information services that use the IGI-POP service (IGI-POP Customers) the capability to originate traffic to and receive traffic from the Public Switched Telephone Network (PSTN) and to and from the Internet.

7.1.2(A).2.a PSTN to VoIP Customer Traffic

IGI-POP service allows IGI-POP Customers to receive traffic from the PSTN including traffic from CMRS Carriers, LECs and IXCs. Feature Group IP will provide the numbers that will be used as a network address for PSTN purposes. Alternatively, the Customer may authorize Feature Group IP to "port" an existing number, if the existing number is rate centered within a LATA where Feature Group IP has an LRN.

7.1.2(A).2.b VoIP Customer to PSTN Traffic

IGI-POP service allows IGI-POP Customers to send traffic to the PSTN including CMRS, LEC and IXC destined users by initiating a call using a NANPA 7 or 10 digit address.

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Feature Group IP will transmit the Calling Party Number of the VoIP customer, if one exists and it is possible to do so. Feature Group IP will also make appropriate entries in the Line Information Data Base to allow other Directory information to be transmitted as part of the call, if it is possible to do so. Unless otherwise requested or technically infeasible, IGI-POP shall pass the Callable E-mail address as the calling party name.

D

7.1.2(A).2.c VoIP Customer to VoIP Customer Traffic

IGI-POP service will allow all connected customers to exchange traffic with each other via Session Initiation Protocol. Additionally, IGI-POP will make available to the public Internet the ability to place and receive e-mail calls to and from IGI-POP customers.

7.1.2(A).3 Directory Number Listings

An IGI-POP customer must list as its address for its directory listing either:

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7.1.2(A).3.a. a "callable virtual electronic (e.g. e-mail) address;" or

7.1.2(A).3.b. an IP address or fully qualified domain name capable of receiving and sending calls to or from the public Internet, or

7.1.2(A).3.c. a unique physical address in the LATA which the IGI-POP is located.

7.1.2(A).4 To the extent there is a unique physical address, customer shall provide the address for and Feature Group IP shall associate this unique physical address with the appropriate 7 or 10 digit phone number for 911 purposes.

7.1.2(A).5 Interfaces

The IGI-POP Customer shall interface via an IP connection via one of the available port methods listed below in the rate schedule.

7.1.2(A).6 Ordering

The IGI-POP customer shall specify the number of simultaneous Ethernet Voice Sessions which the customer desires upon order and shall specify the type of Codec and/or RAS port for each EVS upon order. Additionally, an ICB surcharge will apply to all codecs other than G.711.

7.1.2(A).7 8YY and 1+ Traffic

8YY and telephone toll traffic that is presubscribed to Interexchange Carriers originating from Customers or their Authorized Users is routed for completion to the appropriate carrier. To the extent a data dip is required in order to determine the appropriate routing of a call or the identity of the proper carrier to receive the traffic, additional charges will apply.

7.1.2(A).8 ABS

Alternately Billed Services (ABS) calls are not provided by IGI-POP. Should ABS calls occur and be processed by the Company's Network, Customer will pay all ABS charges

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from the Company for these services	
7.1.2(A).9 <u>911 Service</u> In the event of a 911 call from an IGI-POP customer, Feature Group IP shall route to the appropriate PASP based upon the provided Directory Number Listings address information. In the event there is no "Physical address," Feature Group IP shall route to the default PSAP for the LATA.	T
7.1.2(B) IGI-POP 500 Service	N
7.1.2(B).1 IGI-POP 500 Service is available as a chargeable option in conjunction with IGI-POP services.	N
7.1.2(B).2 An IGI-POP customer who is also a Responsible Service Provider (RSP) may request a "500" non-geographic number to provide a means for others to identify the RSP's and/or RSP's ISP customers' call sessions, and/or to facilitate call back capability. The service must be purchased separately for each market in which the RSP purchases IGI-POP service. Although rates are based on the volume of numbers assigned, pricing is for the non-geographic service capability and not the number itself.	N
7.1.2(B).3 Company will use its best efforts to enable call back to each 500 number as a flat rated local call for the calling party by requesting both direct and indirect interconnection to every Interconnected PSTN Provider operating in the LATA in which the IGI-POP 500 Service is requested. Company will not be responsible for the communications with Interconnected PSTN Provider networks outside of the LATA in which IGI-POP 500 Service is requested, but will support direct Customer efforts to convince Interconnected PSTN Provider to perform translations to allow the 500 number to route. Company consents to Customer use of the 500 number for this purpose.	N
7.1.2(B).4 Company will allow an assigned 500 number to be tied to a unique Company LRN in order to support multiple addresses or addressing methods. In the event the RSP wishes to support more than one address or addressing method with an individual 500 number, the RSP must have in place an operational automatic call distribution system that will allow further routing of calls to the intended End Point. RSPs may use this method to promote interoperation between the North American Numbering Plan and other numbering and naming methods or to facilitate alternative routing for NANP addresses and numbers.	N
7.1.2(b).5 Special requests tied to advanced applications (illustrative examples: disaster recovery projects, reverse emergency notification projects, floating number projects or dial-up Internet projects) may require field testing and pre-planning. This will be likely be necessary when a project requires the 500 numbers to be loaded, translated and routable by every Interconnected PSTN Provider within a specific area or throughout the NANPA. In the event one or more Interconnected PSTN providers refuse to properly route calls from their network to Company's network, or otherwise refuse to support interoperation of their	N

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services with IGI-POP 500 service, Company will use its best efforts to find a technical/legal work around.	N N
<p>7.1.2(C) Future Restrictions and Requirements: This section is reserved for future use. It is anticipated that additional requirements related to incorporating 911 functions, CALEA requirements and numbering resources will be addressed by the FCC. When and if the FCC promulgates requirements concerning VoIP, they will be reflected in the Tariff to the extent necessary.</p>	T
<p>7.2. IGI-POP Rates and Charges</p> <p>7.2.1 Description of Rates and Charges There are three types of rates and charges that apply to IGI-POP Service. These are monthly Recurring Charges, Usage Rates and Non-Recurring Charges including Installation of Service charges.</p> <p>7.2.1(A) Monthly Recurring Charges: Monthly Recurring Charges are flat rates for facilities that apply each month or fraction thereof that a specific rate element is provided.</p> <p>7.2.1(B) Usage Rates: Usage rates are rates applied on a per minute or per query basis. Usage rates are accumulated over a monthly period with fractional usage rounded up to the next full minute.</p> <p>7.2.1(C) Non-Recurring Charges: Non-Recurring charges are one time charges that apply for a specific work activity (i.e., installation of new service or change to an existing service).</p> <p>7.2.1(D) Installation of Service: Non-Recurring charges apply to each IGI-POP Service installed. The charge is applied per EVS or Physical Interface.</p>	
<p>7.3. Application of Rates and Charges</p> <p>7.3.1. Regulations governing the rates and charges which apply for IGI-POP Service. There are three types of rates and charges that apply to the various rate elements for IGI-POP Service. These are nonrecurring charges, monthly recurring rates (including fixed and per mile rates) and usage rates.</p> <p>7.3.2. Specific Rates and Charges are set forth in 7.5 (Rates and Charges).</p> <p>7.3.3. Nonrecurring Charges are one-time charges that apply for a specific work activity (i.e., installation or change to an existing service.) Nonrecurring charges are applicable for installation of services, installation of option certain features service rearrangements.</p> <p>7.3.4 Monthly Recurring and Usage Rates (including fixed and per mile rates) are flat</p>	

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recurring rates that apply each month or fraction thereof that a specific rate element is provided. For billing purposes, each month is considered to have thirty (30) days.

Usage rates for each EVS are rates that apply on a per unit basis (e.g., per call, per minute) when a specific rate element is used. Usage charges are accumulated over a monthly period.

7.3.5 IP Port Interface is assessed based on the total of the monthly facilities charge and monthly usage charges as applicable. The monthly facilities charge consists of a fixed rate based on the type of IP Port Interface, i.e., 100BaseT Ethernet, Gig-E, IP-DS1 or IP-DS3. Nonrecurring charges will be calculated on an Individual Case Basis.

7.4 Billing of Non- Local Minutes

When recording originating non-local calls over IGI-POP, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating non-local call usage over IGI-POP ends when the originating entry switch receives disconnect supervision from either the originating Local Switching Center (indicating that the originating End Point User has disconnected), or the Customer's facilities, whichever is recognized first by the entry switch.

For terminating non-local calls over IGI-POP, usage measurement begins when a seizure signal is received from the Carrier's Trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over IGI-POP ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.

7.5 Rates and Charges

Rate Element	Rate Per Month
7.5.1 Service Implementation	
7.5.1(A). Service Ordering Charge,	
Per DS-1	ICB
Per DS-3	ICB
Per 100BaseT	ICB
Per Gig-E	ICB
7.5.2 Change Charges, Per Order,	
Service Date	ICB
Design Changes	ICB
Expedite Charge	ICB
7.5.3 Cancellation Charges, Per Order	ICB
7.5.4 IP Ethernet Interface Port Charge	

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7.5.4(A)

DS1 Monthly	\$105.18
Non Recurring	
1 st DS1	\$600.00
Each Additional DS1	\$456.40
DS3 Monthly	\$1,168.00
Non Recurring	
1 st DS3	\$605.00
Each Additional DS3	\$496.00
100Base-TMonthly	\$2,200
Non Recurring	
1 st 100BaseT	\$1200.00
Each Additional 100BaseT	\$900.00
Gig-E Monthly	\$2,800.00
Non Recurring	
1 st Gig-E	\$5,000.00
Each Additional Gig-E	\$3,000.00

7.5.5 Local Switching and Network Rate Elements

Local Switching per Enabled EVS using 711 Codec
Monthly Recurring Charge \$ 22.92

Local Switching and Network Rate Elements

Local Switching per Enabled EVS using 729 Codec
Monthly Recurring Charge \$ 34.92

Local Switching and Network Rate Elements

Local Switching per Enabled EVS using RAS
Monthly Recurring Charge \$ 25.00

7.5.6 Reserved for Future Use

7.5.7 Reserved for Future Use

7.5.8 Chargeable Optional Features

Rate Element	Rate Per Minute/Transaction
Non-Local Domestic Termination Charge	\$0.02531
411 Information Call	\$1.50
Customized Routing	ICB

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Network Blocking Charge (Per Blocked Call)	ICB	
911 Routing for ESP Users	ICB	
Local Number Porting with LOA from End Point User	ICB	
7.5.9 IGI-POP 500 Service rates:		N
One 500 number:	\$25.00 per month	N
Group of ten numbers:	\$75.00 per month	N
Group of one hundred numbers:	\$150.00 per month	N
More than one hundred numbers:	ICB	N
7.5.10 Reserved for Future Use		T

APPENDIX B

Pre-Filed Direct Testimony of Lowell Feldman in Texas PUC Docket No. 33323 dated
October 15, 2007

1 **October 15, 2007**

2 **DOCKET NO. 33323**

3
 4 **PETITION OF UTEX §**
 5 **COMMUNICATIONS CORPORATION §**
 6 **FOR POST-INTERCONNECTION § PUBLIC UTILITY COMMISSION**
 7 **DISPUTE RESOLUTION WITH AT&T §**
 8 **TEXAS AND PETITION OF AT&T §**
 9 **TEXAS FOR POST- §**
 10 **INTERCONNECTION DISPUTE § OF TEXAS**
 11 **RESOLUTION WITH UTEX §**
 12 **COMMUNICATIONS CORPORATION §**

13 **PRE-FILED DIRECT TESTIMONY OF LOWELL FELDMAN ON BEHALF OF**
 14 **UTEX COMMUNICATIONS CORPORATION**

15 **INTRODUCTION AND SPECIFIC HISTORY OF THE AGREEMENT**

16 **Q: PLEASE STATE YOUR NAME AND BUSINESS TITLE.**

17 **A:** My name is Lowell Feldman. I am the founder and CEO of UTEX Communications
 18 Corporation, the Complainant and Respondent in this case. Before I formed UTEX I served as
 19 founder and CEO of Waller Creek Communications, Inc. ("WCC"), which was later sold to and
 20 became El Paso Global Networks (now known as Alpheus). I founded WCC in February 1995. It
 21 became a full time occupation in April 1996 and a going concern in August 1996. During my
 22 time at WCC I negotiated and arbitrated the terms and implementation of the specific
 23 interconnection agreement ("ICA") that UTEX later adopted for its own use.

24 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
 25 **EXPERIENCE.**

26 **A.** I received a Bachelor of Arts in Economics from the University of Texas at Austin, where
 27 I also completed honors programs in and received special honors in Economics and Liberal Arts.
 28 I received a J.D. from the University of Texas School of Law and have also completed 24 hours
 29 of extra-curricular graduate work in Accounting, Finance, and Economics. I was an employee of

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1 the Texas Public Utility Commission (the "Commission") in the Economic and Policy Section of
2 the Telecommunications Division (this section no longer exists under the Commission's current
3 structure) where I testified on telecommunications policies related to economics, competition,
4 cost of service, and technology. I also currently teach a course at the University of Texas School
5 of Law in Communications and Technology Law.

6 **Q. PLEASE TELL US WHAT THIS COMPLAINT IS ABOUT AT THE HIGHEST**
7 **LEVEL.**

8 A: Paragraph 25 of the FCC's *First Report and Order on Implementation of the Local*
9 *Competition Provisions of the Telecommunications Act of 1996*; 11 FCC Red. 15499 (1996)
10 states:

11 In the Report and Order, the Commission establishes some national rules
12 regarding the duty to negotiate in good faith, but concludes that it would be futile
13 to try to determine in advance every possible action that might be inconsistent
14 with the duty to negotiate in good faith. *The Commission also concludes that, in*
15 *many instances, whether a party has negotiated in good faith will need to be*
16 *decided on a case-by-case basis, in light of the particular circumstances.* The
17 Commission notes that the arbitration process set forth in section 252 *provides*
18 *one remedy for failing to negotiate in good faith. (emphasis added)*

19 At a high level, this case is about AT&T's multi-year bad faith tactics against UTEX. There are
20 many particular circumstances. One particular circumstance is that UTEX has been deprived by
21 this Commission and AT&T of its rights to resolve issues through the arbitration process set
22 forth in 252. We now have a unique set of "particular circumstances" in this complaint in that the
23 remedy of a new contract is no longer on the horizon. We are the "case-by-case" on how to
24 exhaustively deal with a bad faith incumbent for the signaling, routing and rating of all traffic to
25 and from new technology.

26 **Q. PLEASE TELL US WHAT THIS COMPLAINT IS ABOUT AT ON A DETAILED**
27 **LEVEL.**

1 This complaint is about AT&T's bad faith attempt to get the Texas PUC to impose public
2 policy restrictions on UTEX's current and future business plans. In essence AT&T has
3 successfully focused UTEX's personnel and financial resources on AT&T's many breaches of the
4 existing interconnection agreement, and away from UTEX's efforts to solve the technology
5 issues related to and then expansively intermediating new technology voice enabled capabilities
6 with users of the Legacy PSTN.

7 UTEX wishes to comply with and incorporate all FCC Policy decisions as well as the
8 Texas PUC arbitration and contract decisions from UTEX's case and WCC's cases regarding
9 access to and use of UNEs (our fiber issues) and Interconnection (all of our other issues). AT&T,
10 however, has implemented business practices that go far beyond these decisions, and is
11 interpreting the language in our ICA in ways that were never discussed or even contemplated.
12 There are no prohibitions or limitations on UTEX's ability to provide both wholesale and retail
13 telecommunications services to its customers. In some recent ICA arbitrations where UTEX was
14 not a party, the Commission has (rightly or wrongly) increasingly looked at the competing
15 carrier's specific business plans and contemplated services to determine the existence and scope
16 of the requesting carrier's right to interconnect, resell AT&T's services, obtain UNEs and to
17 collocate. However, since this is a contract dispute, the Commission can not change the terms of
18 our contract. In these other cases, AT&T has strongly supported these "new agreement" inquiries
19 in an attempt to limit its interconnection, resale, UNE and collocation obligations, and has done
20 so by spewing disinformation as to what the real issues are. Now that we are moving forward
21 with this complaint case, AT&T wants the PUC to ignore UTEX's specific activities and
22 business practices and contract history and instead blindly impose new ICA terms developed or

1 developing in other cases that do not address or contemplate UTEX's specific business plan,
2 service mix or network architecture.

3 AT&T has stated and has demonstrated its intent to ignore the language in the parties'
4 current ICA so as to limit UTEX to only providing traditional retail Legacy services to
5 traditional business and residential customers. AT&T is attempting to regulate and limit UTEX's
6 services and the customers UTEX is allowed to serve through its tortured and purposefully
7 incorrect ICA readings and also through its unilaterally developed and implemented "CLEC
8 Policies," "Homegrown Billing System" and its refusal to deal with UTEX in good faith for the
9 mutual exchange of traffic when it involves new technology.

10 First, AT&T has and still is purposefully acting in bad faith to prevent clarity on what
11 happens after two networks are joined for the mutual exchange of traffic when new technology is
12 involved. These issues are the signaling, routing and rating issues related to the AT&T
13 affirmative case (AT&T's DPL Issues) whereby AT&T actions show a clear belief it should be
14 paid for "Interconnection" and it should not be bound by the Act and by the express terms of the
15 contract.

16 The parties have both arbitrated and bargained for¹ "Reciprocal Compensation"
17 provisions in our contract. AT&T has, through its bad faith actions impeded alternative provision
18 of service to VoIP providers through its own interpretation of its tariffs. Under AT&T's view
19 each and every new technology VoIP provider is some new type of IXC carrier which is
20 somehow engaged in fraud with UTEX. The problem AT&T has is it forgot that **SBC presented**
21 *nearly the same argument ten years ago and lost*. This loss directly led to the unique language
22 UTEX relies upon to provide its service to ESPs with no compensation due.

¹ The bargained for language is 1.4.1 of Attachment 12.

1 Further, AT&T has acted in bad faith and simply refused to establish efficient
2 Interconnection for the mutual exchange of traffic. These are basically UTEX's affirmative DPL
3 issues. Basically, AT&T refuses to interconnect as a *peer*, be it via SS-7, or at the IP layer with
4 Soft Switches, or using ISDN Interconnection. AT&T is abusing its market dominant position
5 and simply refuses to follow the good faith obligations in our contract, in the Commission's rules
6 and in the Act. AT&T forces the entire industry to dumb down its technology to a level required
7 by AT&T and then insists that new technology must pay a premium if new technology traffic
8 touches AT&T's network. This expressly violates the competitive intent of the Act and our
9 agreement. AT&T does this by unilaterally and creating artificial conditions precedent and then
10 by refusing to resolve the ensuing difficulties. They do things like stating there is some
11 overriding technical concern, no ordering mechanism exists or some industry standard must first
12 be developed.² Often these conditions may be ordering forms and procedures or information
13 needs or even unspecified "technical concerns" whenever new technology or new concept is
14 involved or, in our case, when ever an arbitrated issue that AT&T lost but still doesn't want to
15 implement is involved.³

16 This case is also about AT&T acting in bad faith when issues arose related to the
17 adoption of new technology in the industry and how that technology impacts current
18 interconnection. AT&T has refused to interconnect using new technology such as ISDN
19 Interconnection. Even when UTEX developed a way to allow AT&T to use its old technology⁴

² Meanwhile AT&T's unregulated affiliates are hard at work trying to develop products and services for the very markets and opportunities UTEX and its customers are pursuing.

³ Dark Fiber information (the 6th time this issue is now in front of the Commission) and ISDN Interconnection (the 4th time).

⁴ UTEX tried to mitigate its damages by proposing direct B-Link interconnection using AT&T's favored SS-7 methods of signaling for interconnection. Here AT&T simply refused to

1 and when UTEX tried to compel interconnection utilizing this technology, AT&T imposed
2 regulations on its competition through its operational service, billing and support process that are
3 inherently anticompetitive, counter to the contract and the Act and developed in bad faith in
4 order to preserve Legacy AT&T revenue streams by artificially increasing costs on new entrants.

5 UTEX's business plan revolves entirely around supporting new technology services and
6 applications consistent with the intent of the Act that allows UTEX to mutually exchange traffic
7 with AT&T and does not allow AT&T to extract monopoly rents for such traffic. UTEX directly
8 competes with AT&T and its affiliates at the wholesale level for new technology service
9 providers' business. Unlike AT&T, however, UTEX does not (i) require its customers to deploy
10 equipment or processes that turn IP systems into TDM systems or (ii) try to impede new
11 technology deployment and interoperability of this new technology with the Legacy network.
12 UTEX specifically supports the inherent control of users of new technology, while AT&T
13 specifically exerts control over users' choices. UTEX supports open network and open platform
14 concepts as a service provider; AT&T wishes to kill the ability of users to interoperate through
15 open platforms.

16 UTEX treats Voice over Internet traffic exactly like all other Internet traffic that is
17 exchanged between LECs. AT&T, however, wants to treat various kinds of Internet traffic
18 differently based on criteria that are not explained but that are simply required. AT&T's intent is
19 to inject risk, impose costs and handicap all providers other than AT&T or its affiliates. AT&T
20 admits in its RFAs in Federal Court that its express intent to turn each and every VoIP

"mutually" pass traffic – of course unless UTEX agreed to pay extra rents from AT&T's tariff. Basically, AT&T refuses to comply with the Act and refuses to treat UTEX as an equal. True, UTEX does not have 30 Billion in free cash flow per year, but under the Act we are peers for the purpose of mutually exchanging traffic. AT&T can not require us to be an unwilling customer. Besides, we have the Internet on our side. The Internet is far bigger than AT&T's network.

1 application provider into a Legacy IXC that can only purchase "Exchange Access" and only
2 from AT&T. What AT&T forgets, on purpose and in bad faith, is that this exact issue was
3 litigated as part of the original Waller Creek Arbitration over ten years ago. SBC lost but has
4 never given up.

5 Ten years ago, WCC and Time Warner (TWC) were engaged in an important Arbitration
6 against SBC (now AT&T) here at this Commission on "Internet Traffic." The whole industry
7 was watching and participating. AT&T even did its best to get politically elected state officials to
8 weigh in and influence the PUC. The difference between the WCC and TWC cases was that
9 TWC was engaged in a complaint case, whereas WCC was arbitrating a new ICA. As is clear
10 from the exhaustive record and multiple hearings, all parties knew exactly what they were doing
11 and were well represented. The Time Warner case, from the SBC perspective, was that there was
12 no "Meeting of the Minds" with respect to the intent for SBC to pay Recip Comp for "Internet
13 Traffic." However, our case was to establish new language that intended to cover ALL traffic. I
14 suspect that AT&T, to prevent a bad faith finding, will say there was no meeting of the minds as
15 well in our case and thus the dispute is colorable. If AT&T asserts this, it will be demonstrably
16 wrong and it will be another example of their bad faith. One must look at the extensive record. I
17 was present. ALL Internet traffic was intended to be covered by our arbitrated ICA.

18 While the primary issue for Time Warner was getting paid for dial-up Internet traffic, the
19 primary issue for WCC was getting certainty in a new ICA on the compensation issues for ALL
20 TRAFFIC to be exchanged between the parties. There is an exhaustive record on how various
21 parties could or may want to or try to "jurisdictionalize" traffic by identifying end points among
22 and between different uses of technology and then once a proper "jurisdiction" was found or
23 deemed how rating and routing would be accomplished. SBC people and WCC people

1 specifically testified about the "Nature" of the Internet, how it works when both voice and data
2 and voice and other data share facilities. We specifically debated whether this traffic should be
3 classified as "Telephone Exchange" or "Exchange Access" and debated how to classify the
4 traffic. In fact WCC testified to and SBC admitted that SBC's intent not only in Texas but in
5 every state was to "*eliminate*" the ESP Exemption and to move all traffic to treatment as
6 "Exchange Access." Ultimately the Commission made several important rulings in our case. It
7 ruled the ESP Exemption was and is "good law" and should be implemented in the ICA. It ruled
8 that Traffic to and from "ESPs" is not "Exchange Access" but is "Telephone Exchange Service"
9 and should be "treated" as local. It ruled that while the "Jurisdictional Nature" of ESP traffic my
10 be interstate, the parties would not try and rate and bill the traffic as "Interstate" but would treat
11 it under the local reciprocal compensation sections as required by the Act. Finally, the
12 Commission then imposed a relatively low reciprocal compensation rate in comparison to other
13 state prescribed rates. WCC incorporated these findings in drafting the unique language in the
14 ICA. Specifically WCC accomplished the goals of the Commission by explicitly treating ALL
15 traffic to and from ESPs as "Local" for routing and rating purposes. This was an intended
16 overriding and overlaying effect. The intent was that regardless of any party's desire to
17 "jurisdictionalize" the call or the content in the call, or to find the "ultimate end points" of the
18 users, all understood that with respect to the treatment of this type of traffic as between WCC
19 and SBC (and thus now UTEX and AT&T) it was to be routed as local and rated under the
20 reciprocal compensation provisions. I accomplished this goal by allowing the LEC who served
21 the ESP customer to designate the traffic as "ESP." Unique and specific definitions were drafted
22 and applied to the Compensation Section to accomplish that goal. Again, regardless of our ESP

1 customers and their customer's uses the "jurisdiction" and "nature" didn't matter, the call would
2 be routed and rated as local and the reciprocal compensation rate would apply.

3 After the agreement was in effect, the parties then negotiated a further amendment that
4 eased the cost and administrative functions of measuring, rating and billing by causing all traffic
5 to and from an ESP to have "*no compensation due.*" Other negotiated give and takes were made
6 at the same time as well not related to compensation. Related to compensation, SBC at the time
7 had decided to re-litigate similar issues that it had lost in the WCC case against other CLECs,
8 again hoping to secure a lower or preferably zero rate for "Internet Traffic." SBC simply did not
9 want us, or our unique arbitration history or our specific right to collect "reciprocal
10 compensation for ESP traffic" out there.⁵ I rejected AT&T's original language and insisted on
11 broader terms that were consistent with our recent arbitration and continued application of the
12 ESP Exemption. I also insisted on language that made it clear that even if there was a
13 reclassification of the ESP traffic to "Exchange Access" or something else from "telephone
14 exchange" in the future, there would still be "no compensation due" and thus no need to change
15 our agreement.⁶

16 AT&T has simply ignored our contract in bad faith. AT&T, counter to the express terms
17 and express intent of the contract, is now attempting to "jurisdictionalize" the ESP traffic and
18 then bill UTEX for it. AT&T is violating multiple sections of the contract to do so, as UTEX has
19 presented in its recent Motion for Summary Judgment.

⁵ By being "out there" it is available for adoption by another CLEC, such as UTEX. At the time SBC had been ordered to pay other CLECs for terminating traffic. SBC saw that WCC could win its new litigation, and those parties could still opt into the WCC agreement and get paid.

⁶ WCC knew SBC was active at both the state and federal level to achieve new terms on rules for the industry. Again, we wanted business certainty.

1 UTEX requests the Texas PUC reaffirm that the primary purpose of FTA 96 was to
2 promote competition at both the retail and wholesale level and to support innovation, invention
3 and deployment of new concepts, ideas, services and applications. Indeed, the PUC should once
4 again state that the purpose of the Act and UTEX's ICA was not to create a few Bell clones and
5 protect AT&T's Legacy network and revenue streams, but to instead allow and encourage entry
6 by many kinds of providers that provide their services in many different ways with the ultimate
7 goal that our society's communications needs would be fulfilled in the most efficient manner and
8 at the lowest possible transaction cost through a vibrant competitive market that is not stifled by
9 any single dominant provider. The PUC should once again validate UTEX's right to compete
10 using and supporting new technology at the wholesale level by preventing AT&T from ignoring
11 the ICA terms to limit interconnection and/or access to UNEs when they are the potential vehicle
12 that partially support other new technology entrants. UTEX's right to provide
13 telecommunications services support to providers of VoIP services, and the operational terms for
14 routing, signaling and rating such wholesale interconnection traffic and what are appropriate
15 measures to prevent misrouting must be resolved through this complaint consistent with the
16 bargain that WCC reached with AT&T when the parties agreed that "no compensation" would be
17 due for all traffic "to and from" ESPs.

18 In the event that the Texas PUC decides that somehow UTEX is a threat to the Public
19 Interest, and that it must regulate and/or limit UTEX's deployment of new technology that
20 intermediates between IP enabled services and the TDM world by limiting the scope or
21 increasing the cost of interconnection, then UTEX requests that the PUC expressly set out these
22 limits and regulate use directly rather than letting AT&T do so through unilateral implementation
23 of anticompetitive policies.

1 **Q. HOW MUST THIS COMMISSION RESOLVE THE PARTIES ISSUES?**

2 **A:** This complaint must be about interpreting and applying the terms of the current
3 interconnection agreement between UTEX and AT&T. We are not here to change the contract.
4 We are therefore not inventing a wheel, or criticizing the make up or structure of it. We are
5 merely trying to make it spin. We are not here to re-ask questions that were already answered.

6 However, the fact is that AT&T has decided to continually breach the contract to not only
7 to make our ride bumpy, but is throwing tacks in the road and has been placing wrenches in the
8 spokes to stop the wheel from spinning altogether.

9 When AT&T intentionally manufactures pseudo technical problems related to ISDN that
10 are not real;

11 When AT&T knowingly and willfully ignores the plain meaning of the contract related to
12 ESPs;

13 When AT&T, by isolating and manipulating the plain meaning of words, effectively
14 changes the benefit of the bargain of the existing contract with respect to compensation;

15 When AT&T, by implementing changes to its own business practices in secret without
16 notifying UTEX, effectively changes the terms of the contract through billing access charges for
17 new technology calls;

18 When AT&T, by refusing to deal in good faith to resolve real policy issues that naturally
19 arise when two companies deal with emerging technologies;

20 When AT&T refuses to acknowledge the basic construct of the Act when it involves the
21 mutual exchange of traffic and establishing interconnection via SS-7 B-links;

Such as determining appropriate content to place in the IAM field of traffic that comes from Internet Voice companies.

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1 When AT&T materially misrepresents the nature of the issues so as to create an
2 appearance of impropriety by UTEX when in fact it has no direct evidence of misrouting and
3 UTEX has repeatedly offered to stop any IXC from misrouting traffic;

4 When AT&T refuses to name a single bad acting legacy IXC carrier to UTEX or this
5 Commission after UTEX volunteers to assist AT&T in stopping any bad acting IXC from
6 misrouting non-exempt ESP traffic as ESP traffic in 2003, 2004, 2005, 2006 and 2007 (different
7 attempts to work with AT&T were made in different ways);

8 When AT&T does all of these things it is acting in an anticompetitive way to stop the
9 UTEX wheel from spinning.

10 To make the wheel spin again and to allow the market to decide how fast our wheel
11 should spin, UTEX demands two types of relief by this Commission. First, UTEX will want
12 clear PUC orders to fix the many operational monkey wrenches that are detailed in the item by
13 item DPL section of my testimony – and preferably exercise continued oversight in
14 implementation with respect to resolving all of the open issues related to interconnection and the
15 mutual exchange of traffic (this includes holding workshops on routing, rating and signaling
16 issues related to VoIP, ISDN Interconnection, and SS-7 B-link Interconnection). Second UTEX
17 wants to be compensated through a proper application of Attachment 17 of our ICA. If any
18 willful breach is not covered by this section of the ICA and our calculations of the damages⁸ are
19 not allowed, then UTEX wants a clear ruling such that it may pursue its actual damages in the

⁸ While reviewing the discovery produced by AT&T, we uncovered other methods AT&T used to “book” their contingent liabilities to UTEX. Under the AT&T accounting entries the damages calculation for money potentially owed to UTEX was around 35 million dollars while ours calculations are much higher. There is obviously a need to resolve the math behind what amount would be due for breaching the contract.

1 federal court case which is now active between AT&T and UTEX.⁹ In essence, UTEX needs a
2 clear exhaustion of our PUC remedies so that it may attempt to collect damages in another
3 venue.¹⁰

4 Where additional operational input is needed to resolve any open issue, we should
5 consider the policy behind the Act – as interpreted and implemented by the Commission that
6 created and approved and implemented the WCC ICA. There can be no question that Congress
7 intended that there be more than one wheel – e.g., AT&T is not the only wheel, although it often
8 must provide inputs to the creation of other wheels that will themselves spin. In this respect,
9 under the WCC ICA and the PUC's decisions creating and implementing it – decisions that
10 interpreted policy under the Act – it is clear that UTEX has the right to define its own business
11 plan, its own competitive offerings and choose the technology and how to use it. This
12 Commission must reaffirm the answers that the prior Commission gave when it created the
13 wheel in the WCC case: UTEX can define its own Competitive Entry method and its own
14 business plan; WCC specifically arbitrated the right to treat all ESP traffic as “telephone
15 exchange service” and not as “exchange access”; WCC specifically alleged that AT&T's (SBC
16 at the time) true motivation in the WCC case was to eliminate the ESP exemption; WCC showed
17 that AT&T (SBC at the time) knew that the application of the ESP exemption was good law;
18 WCC won the explicit right to utilize different technology for interconnection.

⁹ For example, even though fiber information rights were established for the first time in the WCC agreement, no related specific liquidated damages sections were added to Attachment 17. Attachment 17 does have general pre-order information. If this Commission finds that AT&T knowingly withheld planning information to UTEX it may also find that the pre-ordering information as described in Attachment 17 should not apply as the remedy. The question is then what damages “do” apply. If this event plays out, UTEX simply want this Commission to say that if a known willful breach occurs and the contract is silent as to the damage amount then UTEX can seek actual damages in Federal Court.

¹⁰ The PUC has repeatedly held it does not have the power to *award* monetary damages.

1 UTEX has no obligation to look or be like SBC. The policy behind the Act and this
2 Commission's prior decisions is that there will be many wheels of many shapes and sizes and we
3 should let them spin – and maybe give them a push from time to time – unless and until the
4 market determines their worth. Anything not prohibited in an ICA is allowed. The PUC rejected
5 then, and should reaffirm now, that the policy is NOT that “everything that is not mandatory is
6 prohibited.” Instead, our policy was and is that “anything that is not prohibited is allowed.” This
7 was appealed by SBC/AT&T all the way through the 5th Circuit. SBC lost and competition won.

8 This case is not the proper vehicle to revisit or reconsider the policy issues established in
9 the WCC cases. This Commission should not consider whether it believes a decision made in
10 those cases was wrong (by the way it was right). Instead, the only reasonable goal for this
11 Commission is to interpret the ICA, implement it and the intent and policy that formed it, and
12 then to enforce the terms. If AT&T wants to re-litigate and ask the PUC to change its mind, it
13 can join UTEX in asking for the arbitration of a replacement ICA, in Docket 26381, to be
14 unabated. Alternatively AT&T can agree to join UTEX in binding commercial arbitration.

15 This Complaint is therefore mostly a review of the history of how the UTEX agreement
16 came into being, what policy and specific issues were covered in the original arbitration, and
17 what meaning should be applied to it. This Complaint is NOT a reconsideration of what went
18 before. It is far too late to grant rehearing of decisions that long ago became final, were appealed
19 and were affirmed by the federal district court and the court of appeals.

20 **Q: WHY IS THE WHEEL NOT SPINNING? YOU DO HAVE THE AGREEMENT,**
21 **NO?**

1 A: We are here because AT&T will not comply with the ICA. It is not following the terms of
2 the ICA and refuses to implement it. The wheel is not spinning because AT&T has locked the
3 parking brake.

4 **Q: BUT SBC HAS RAISED QUESTIONS ABOUT THE TERMS. WHAT IS YOUR**
5 **ANSWER?**

6 A: This Complaint is also about again debunking the increasingly confusing, complex and
7 monolithic maze of competitive roadblocks AT&T has created in an attempt to prevent
8 competitive entry by UTEX. Simply put, AT&T's questions and arguments are not reasons, but
9 merely excuses and purposeful bad faith attempts to deny, delay and deter implementation they
10 have no incentive to allow and every incentive to stop.

11 **Q: PLEASE DESCRIBE HOW YOUR TESTIMONY IS STRUCTURED.**

12 A: My testimony is broken into nine sections. This first section describes in general the
13 overriding issues in this case, namely that AT&T is ignoring the contract terms and intended
14 purposes behind them. It shows that ultimately there is really one big issue – Bad Faith. The
15 second section details UTEX's technology and business. Sections three through nine address
16 specific issues on the DPL, which combined cover all 100 DPL issues in this case. Wherever we
17 could follow the Arbitrators' DPL format we did. Sometimes it was more useful to group certain
18 items together in a different order so that we could more efficiently address both the overarching
19 and discrete issues. Further, in each part of my testimony, UTEX has devised a "Time Line
20 Chart" and corresponding list of materials that points to a common exhibit book that we are also
21 filing with our direct testimony. Because the record in both of UTEX's previous cases and
22 WCC's case as well as the discovery production in this case is so large, we are not attempting to